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HOUSE BILL 540

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Thomas A. Anderson

AN ACT

RELATING TO IDENTIFY SECURITY; REQUIRING POLICE REPORTS;
PROVIDING FOR IDENTITY THEFT PASSPORTS; ALLOWING FOR REMOVAL OF
A FALSE IDENTITY IN CRIMINAL RECORDS; EXTENDING TIME LIMIT FOR
PROSECUTION OF CERTAIN CRIMES; CLARIFYING DEFINITIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 30-1-8 NMSA 1978 (being Laws 1963,
Chapter 303, Section 1-8, as amended) is amended to read:

"30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--
[No] A person shall not be prosecuted, tried or punished in any
court of this state unless the indictment is found or
information or complaint is filed [~~therefor~~] within the time as
provided:

A. for a second degree felony, within six years
from the time the crime was committed;

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1 B. for a third or fourth degree felony, within five
2 years from the time the crime was committed;

3 C. for a misdemeanor, within two years from the
4 time the crime was committed;

5 D. for a petty misdemeanor, within one year from
6 the time the crime was committed;

7 E. for any crime against or violation of Section
8 51-1-38 NMSA 1978, within three years from the time the crime
9 was committed;

10 F. for a felony pursuant to [~~Sections~~] Section
11 7-1-71.3, 7-1-72 or 7-1-73 NMSA 1978 [~~or Section 4 of this 2005~~
12 ~~act~~], within five years from the time the crime was committed;
13 provided that for a series of crimes involving multiple filing
14 periods within one calendar year, the limitation shall begin to
15 run on December 31 of the year in which the crimes occurred;

16 G. for an identity theft crime pursuant to Section
17 30-16-24.1 NMSA 1978, within five years from the time the crime
18 was discovered;

19 [~~G.~~] H. for any crime not contained in the Criminal
20 Code or where a limitation is not otherwise provided for,
21 within three years from the time the crime was committed; and

22 [~~H.~~] I. for a capital felony or a first degree
23 [~~violent~~] felony, no limitation period shall exist and
24 prosecution for these crimes may commence at any time after the
25 occurrence of the crime."

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1 Section 2. Section 30-16-24.1 NMSA 1978 (being Laws 2001,
2 Chapter 138, Section 1, as amended) is amended to read:

3 "30-16-24.1. THEFT OF IDENTITY--OBTAINING IDENTITY BY
4 ELECTRONIC FRAUD.--

5 A. Theft of identity consists of:

6 (1) willfully obtaining, recording or
7 transferring personal identifying information of another person
8 without the authorization or consent of that person and with
9 the intent to defraud that person or another or with the intent
10 to sell or distribute the information to another for an illegal
11 purpose; or

12 (2) using personal identifying information of
13 another person, whether that person is dead or alive, or of a
14 false or fictitious person, to avoid summons, arrest or
15 prosecution or to impede a criminal investigation.

16 B. Obtaining identity by electronic fraud consists
17 of knowingly and willfully soliciting, requesting or taking any
18 action by means of a fraudulent electronic communication with
19 intent to obtain the personal identifying information of
20 another.

21 C. As used in this section:

22 (1) "fraudulent electronic communication"
23 means a communication by a person that is an electronic mail
24 message, web site or any other use of the internet that
25 contains fraudulent, false, fictitious or misleading

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1 information that depicts or includes the name, logo, web site
2 address, email address, postal address, telephone number or any
3 other identifying information of a business, organization or
4 state agency, to which the person has no legitimate claim of
5 right; ~~and~~

6 (2) "personal identifying information" means
7 information that alone or in conjunction with other information
8 identifies a person, including the person's name, address,
9 telephone number, driver's license number, social security
10 number, date of birth, biometric data, place of employment,
11 mother's maiden name [of the person's mother], demand deposit
12 account number, checking or savings account number, credit card
13 or debit card number, personal identification number,
14 electronic identification code, automated or electronic
15 signature, passwords or any other numbers or information that
16 can be used to access a person's financial resources, obtain
17 identification, act as identification or obtain goods or
18 services; and

19 (3) "biometric data" means data, such as
20 finger, voice, retina or iris prints or deoxyribonucleic acid,
21 that capture, represent or enable the reproduction of unique
22 physical attributes of a person.

23 D. Whoever commits theft of identity is guilty of a
24 fourth degree felony.

25 E. Whoever commits obtaining identity by electronic

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1 fraud is guilty of a fourth degree felony.

2 F. Prosecution pursuant to this section shall not
3 prevent prosecution pursuant to any other provision of the law
4 when the conduct also constitutes a violation of that other
5 provision.

6 G. In a prosecution brought pursuant to this
7 section, the theft of identity or obtaining identity by
8 electronic fraud shall be considered to have been committed in
9 the county:

10 (1) where the person whose identifying
11 information was appropriated, obtained or sought resided at the
12 time of the offense; or

13 (2) in which any part of the offense took
14 place, regardless of whether the defendant was ever actually
15 present in the county.

16 H. A person found guilty of theft of identity or of
17 obtaining identity by electronic fraud shall, in addition to
18 any other punishment, be ordered to make restitution for any
19 financial loss sustained by a person injured as the direct
20 result of the offense. In addition to out-of-pocket costs,
21 restitution may include payment for costs, including attorney
22 fees, incurred by that person in clearing the person's credit
23 history ~~[or]~~, credit rating, criminal history or criminal
24 charges or costs incurred in connection with a ~~[civil or~~
25 ~~administrative]~~ legal proceeding to satisfy a debt, lien,

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1 judgment or other obligation of that person arising as a result
2 of the offense.

3 I. The sentencing court shall issue written
4 findings of fact and may issue orders as are necessary to
5 correct ~~[a public record]~~ public records and errors in credit
6 reports and identifying information that ~~[contains]~~ contain
7 false information as a result of the theft of identity or of
8 obtaining identity by electronic fraud."

9 Section 3. A new section of Chapter 29 NMSA 1978 is
10 enacted to read:

11 "[NEW MATERIAL] IDENTITY THEFT REPORTS.--When a law
12 enforcement officer interviews an alleged identity theft
13 victim, the law enforcement officer shall make a written report
14 of the information provided by the victim and by witnesses on
15 appropriate forms provided by the attorney general. A copy of
16 the police report shall be filed with the office of the
17 attorney general."

18 Section 4. [NEW MATERIAL] IDENTITY THEFT PASSPORT--
19 DATABASE.--

20 A. The attorney general, in cooperation with the
21 department of public safety and the motor vehicle division of
22 the taxation and revenue department, shall issue an identity
23 theft passport to a person who claims to be a victim of
24 identity theft pursuant to Section 30-16-24.1 NMSA 1978, and
25 who provides to the attorney general:

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1 (1) a certified copy of a court order obtained
2 pursuant to Section 5 of this 2007 act or a full set of
3 fingerprints;

4 (2) a driver's license or other government-
5 issued identification or record; and

6 (3) other information as required by the
7 attorney general.

8 B. An identity theft passport shall contain a
9 picture of the person to whom it was issued and other
10 information as the attorney general deems appropriate.

11 C. The attorney general may enter into a memorandum
12 of understanding with the motor vehicle division of the
13 taxation and revenue department for the development and
14 issuance of a secure form of identity theft passport. When an
15 identity theft passport is issued, the motor vehicle division
16 shall note on the person's driver record that an identity theft
17 passport has been issued.

18 D. An identify theft passport shall be accepted as
19 evidence of identity by law enforcement officers and others who
20 may challenge the person's identity.

21 E. The attorney general shall maintain a database
22 of identity theft victims who have reported to a law
23 enforcement agency or have been issued an identity theft
24 passport. The attorney general may provide access to the
25 database only to criminal justice agencies. For purposes of

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1 identification and authentication, the attorney general may
2 allow access to specific information about a person who has
3 become a victim of identity theft to that person or to that
4 person's authorized representative.

5 F. The attorney general shall keep on file each
6 application for an identity theft passport and each police
7 report of identity theft submitted by a law enforcement agency.

8 G. The attorney general shall prepare and make
9 available to local law enforcement agencies and to the general
10 public an information packet that includes information on how
11 to prevent and stop identity theft.

12 Section 5. [NEW MATERIAL] DETERMINATION OF FACTUAL
13 INNOCENCE--EXPUNGEMENT FROM POLICE AND COURT RECORDS.--

14 A. A person whose name or other identifying
15 information was used, without consent or authorization, by
16 another person who was charged, arrested or convicted of a
17 crime while using such name or identification may, with notice
18 to the prosecutor, file a petition in the criminal action, if
19 pending, or if the criminal action is not pending, then in a
20 court of competent jurisdiction, requesting a determination of
21 factual innocence and an expungement of the petitioner's
22 personal identifying information from the record. If the court
23 finds by clear and convincing evidence that the petitioner did
24 not commit the offense with which the petitioner's identity has
25 been associated, the court shall issue an order certifying the

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1 petitioner's factual innocence.

2 B. When a court finds a petitioner factually
3 innocent pursuant to Subsection A of this section, the court
4 shall order that the petitioner's name and other identifying
5 information contained in the court records be removed and the
6 records labeled to show that, due to identity theft, the
7 information is not accurate and does not reflect the
8 perpetrator's true identity. The court shall also order
9 expungement of the arrest information pursuant to Section
10 29-3-8.1 NMSA 1978.

11 C. A court may at any time vacate the determination
12 of factual innocence if the petition, or information submitted
13 in support of the petition, contains a material
14 misrepresentation or fraud. If the court vacates the
15 determination, the court shall rescind all orders made pursuant
16 to this section.

17 Section 6. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2007.

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